

**Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon
v Tam Cheng Meng** A

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-11B
NCVC-3-01 OF 2017 B
FAIZAH JAMALUDIN JC
23 FEBRUARY 2018

*Land Law — Management corporation — Non-payment of maintenance
charges — Appellant filed action against respondent claiming outstanding
maintenance charges — Whether there had to be assignment under s 4(3) of the
Civil Law Act 1956 from developer to appellant for appellant to have cause of
action — Whether appellant's action against respondent time-barred — Strata
Management Act 2013 s 15* C
D

*Limitation — Statutory provision — Applicability — Appellant filed action
against respondent claiming outstanding maintenance charges — Whether
appellant's action against respondent time-barred — Whether Limitation Act
1953 applicable* E

The respondent was a purchaser and owner of a unit of parcel in Kompleks Pandan Safari Lagoon ('the building') whereas the appellant was the joint management body ('the JMB') of the building. The appellant had filed an action against the respondent at the magistrate court for outstanding service charges for the building in the sum of RM81,413.93 for the period up to June 2015. At the end of the trial, the learned magistrate allowed only part of the claim for the sum of RM3,579.87 being the amount of the service charges owed by the respondent to the appellant for the period from July 2014–June 2015. Dissatisfied with the decision, the appellant filed the present appeal. The issue raised were: (a) whether the magistrate had erred when she held that there had to be an assignment under s 4(3) of the Civil Law Act 1956 ('the CLA') from the developer and the property managers appointed by the liquidator to the appellant, in order for the appellant to have a cause of action against the respondent for the unpaid management fees for the period from 2005 to 13 June 2014 ie the date of the appellant's constitution; and (b) whether limitation had set in under s 6 of the Limitation Act 1953 ('the LA') and the appellant's claim against the respondent was statute-barred. The respondent had raised a preliminary objection that the appellant's appeal to the High Court was incompetent by virtue of s 28(1) of the Courts of Judicature Act 1964 ('the CJA'). F
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- A **Held**, allowing the appeal and setting aside the magistrate's decision with costs of RM10,000 subject to allocator:
- B (1) The court disallowed the respondent's preliminary objection. Section 28 of the CJA read as a whole meant that there could not be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter was RM10,000 or less. Section 28 of the CJA did not state 'where the decision of the subordinate court is for a sum of RM10,000 or less'. Therefore, notwithstanding that the amount awarded by the magistrate court was RM3,579.87, the amount in dispute in the present case was the sum of RM81,413.93 which the appellant claimed was the service charges owing by the respondent as at 22 June 2015 (see paras 15–16 & 20).
- C (2) There was a statutory transfer/handover provision in s 15(1) of the Strata Management Act 2013 ('the SMA') requiring the developer to transfer and handover all the balances and invoices to the appellant once it was established. Thus, there was no legal necessity for an assignment under s 4(3) of the CLA from the developer or the liquidator to transfer to the appellant of its rights to collect the charges from the respondent (see paras 37–38).
- D (3) The learned magistrate had erred in law when she held that for the appellant's claim before June 2015, the Building and Common Property (Maintenance and Management) Act 2007 ('the BPCA') was applicable whereas for the appellant's claims for the month of June 2015, the SMA was applicable. In making the decision, the learned magistrate had failed to take into account the retrospective application of the SMA to developers of developments that had been completed prior to the commencement of the SMA and to JMB's established under the BPCA (see para 39).
- E (4) As a JMB could choose to either file a claim in the tribunal or in a court of competent jurisdiction, it could be implied that the LA shall also not apply to proceedings in court. Further, the SMA's stated purpose was 'to provide for the proper maintenance and management of the buildings and common property, and or related matters'. It would defeat the SMA's stated purpose if the appellant's claim for the outstanding service charges made at court was time-barred whereas if the appellant made the claim at the tribunal, it would not be time-barred. For the above reason, the magistrate had erred in law when she held that limitation had set in under s 6 of the LA and the appellant's claim against the respondent was statute-barred (see paras 43 & 46–47).
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[Bahasa Malaysia summary]

Responden adalah pembeli dan pemilik unit di Kompleks Pandan Safari Lagoon ('bangunan') manakala perayu adalah badan pengurusan bersama

(‘BPB’) bangunan tersebut. Perayu telah memfailkan tindakan terhadap responden di mahkamah majistret bagi caj perkhidmatan yang belum dibayar bagi bangunan tersebut dalam jumlah RM81,413.93 bagi tempoh sehingga Jun 2015. Pada akhir perbicaraan, majistret yang bijaksana membenarkan hanya sebahagian tuntutan bagi jumlah RM3,579.87 sebagai amaun caj perkhidmatan yang belum dibayar oleh responden kepada perayu bagi tempoh dari Julai 2014–Jun 2015. Tidak berpuas hati dengan keputusan tersebut, perayu memfailkan rayuan ini. Isu yang dibangkitkan adalah: (a) sama ada majistret telah tersilap apabila beliau memutuskan bahawa terdapat penyerahhakkan di bawah s 4(3) Akta Undang-Undang Sivil 1956 (‘AUS’) daripada pemaju dan pengurus hartanah yang dilantik oleh penyelesaian kepada perayu, supaya perayu mempunyai kausa tindakan terhadap responden bagi fi pengurusan yang tidak dibayar bagi tempoh dari 2005 hingga ke 13 Jun 2014 iaitu tarikh perlembagaan perayu; dan (b) sama ada had masa yang telah *set in* di bawah s 6 Akta Had Masa 1953 (‘AHM’) dan tuntutan perayu terhadap responden adalah dihalang masa. Responden telah membangkitkan bantahan awalan bahawa rayuan perayu kepada Mahkamah Tinggi adalah tidak kompeten mengikut s 28(1) Akta Mahkamah Kehakiman 1964 (‘AMK’).

Diputuskan, membenarkan rayuan dan mengetepikan keputusan majistret dengan kos sebanyak RM10,000 tertakluk kepada alukator:

- (1) Mahkamah tidak membenarkan bantahan awalan responden. Seksyen AMK dibaca secara keseluruhan bermaksud bahawa tidak boleh terdapat rayuan daripada keputusan mahkamah rendah di dalam kausa atau perkara sivil, di mana amaun yang dipertikaikan atau nilai perkara adalah RM10,000 atau kurang. Seksyen 28 AMK tidak menyatakan ‘where the decision of the subordinate court is for a sum of RM10,000 or less’. Oleh itu, meskipun amaun yang diawardkan oleh mahkamah majistret adalah RM3,579.87, amaun yang dipertikaikan di dalam kes ini adalah jumlah sebanyak RM81,413.93 yang mana perayu mendakwa adalah caj perkhidmatan yang belum dibayar oleh responden pada 22 Jun 2015 (lihat perenggan 15–16 & 20).
- (2) Terdapat peruntukan pindahan statutori/serah dalam s 15(1) Akta Pengurusan Strata 2013 (‘APS’) yang mengehendaki pemaju untuk meminda dan menyerahkan kesemua baki dan invoice kepada perayu apabila sahaja dibuktikan. Oleh itu, tidak terdapat keperluan undang-undang bagi penyerahhakkan di bawah s 4(3) AUS daripada pemaju atau penyelesaian untuk memindahkan kepada perayu haknya untuk mengutip caj daripada responden (lihat perenggan 37–38).
- (3) Majistret yang bijaksana telah terkhilaf dari segi undang-undang apabila beliau memutuskan bahawa untuk tuntutan perayu sebelum Jun 2015, Akta Bangunan dan Harta Bersama (Penyenggaraan dan Pengurusan) 2007 (‘ABHB’) diguna pakai manakala untuk tuntutan perayu bagi

- A** bulan Jun 2015, APS adalah diguna pakai. Dalam membuat keputusan, majistret yang bijaksana telah gagal untuk mengambil kira permohonan retrospektif APS kepada pemaju-pemaju pembangunan yang telah siap sebelum permulaan APS dan kepada penubuhan BPB di bawah ABHB (lihat perenggan 39).
- B** (4) Memandangkan BPB boleh memilih untuk sama ada fail tuntutan dalam tribunal atau dalam mahkamah berbidang kuasa kompeten, ia boleh disiratkan bahawa AHM juga tidak diguna pakai kepada prosiding di mahkamah. Selanjutnya tujuan yang dinyatakan oleh APS adalah ‘to provide for the proper maintenance and management of the buildings and common property, and or related matters’. Ia akan mematahkan tujuan dinyatakan APS jika tuntutan perayu bagi caj perkhidmatan yang belum dibayar dibuat di mahkamah adalah dihalang masa manakala jika perayu membuat tuntutan di tribunal, ia tidak akan dihalang masa. Bagi alasan di atas, majistret telah tersilap apabila beliau memutuskan bahawa had masa telah tentukan di bawah s 6 AHM dan tuntutan perayu terhadap responden adalah dihalang masa (lihat perenggan 43 & 46–47).]

E Notes

For a case on applicability, see 9 *Mallal's Digest* (5th Ed, 2017 Reissue) para 2726.

For a case on non-payment of maintenance charges, see 8(3) *Mallal's Digest* (7th Ed, 2017 Reissue) para 4168.

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Cases referred to

- Lein Tiam Hock v Arumugam all Kandasamy* [1999] 6 MLJ 129; [1999] 3 AMR 3670; [1999] 2 CLJ 853, HC (not folld)
- G** *Malayan Banking Bhd v Syed Ali bin Mohsin* [1991] 3 CLJ Rep 2892; [1991] 3 CLJ 236, HC (refd)
- Manohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149, CA (refd)
- Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187, HC (refd)
- H** *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [2004] 4 AMR 357; [2004] 3 CLJ 321, CA (refd)
- Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97; [2004] 2 CLJ 265, FC (refd)
- I** *Prangin Mall Sdn Bhd v Tang Joo Ming & Anor* [2013] 6 MLJ 753, CA (refd)
- Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 AMR 1742; [1997] 2 CLJ 68, FC (refd)

Legislation referred to

Building and Common Property (Maintenance and Management) Act 2007
(repealed by the Building and Common Property (Maintenance and
Management) Act 2007) s 5(4)

Civil Law Act 1956 s 4(3)

Courts of Judicature Act 1964 ss 28, 28(1), 68, 68(1)(a)

Interpretation Acts 1948 and 1967 s 17A

Limitation Act 1953 s 6

Rules of the High Court 1980 O 55

Subordinate Court Rules 1980 O 49, Form 140

Strata Management Act 2013 ss 3, 7(2), 9, 9(3), 13(2), 15(1), 33, 37(1),
(2), 38, 40, 105, 153, Chapters 2, 5

Strata Titles Act 1985

R Santhi (Susielan & Assoc) for the appellant.

LK Tan (JY Yap with him) (Othman Hashim & Co) for the respondent.

Faizah Jamaludin JC:**INTRODUCTION**

[1] This is an appeal by the appellant/plaintiff who is the joint management body ('JMB') of Kompleks Pandan Safari Lagoon ('the building') against the decision of the learned magistrate in its suit against the respondent/defendant. The defendant is a purchaser and owner of a unit of parcel in the building.

[2] The plaintiff's claim against the defendant at the magistrate's court was for outstanding service charges for the building in the sum of RM81,413.93 for the period up to June 2015. The learned magistrate after full trial allowed only part of the plaintiff's claim for the sum of RM3,579.87, which is the amount of the service charges owed by the defendant to the plaintiff for the period from July 2014–June 2015.

[3] Dissatisfied with the magistrate's decision, the plaintiff filed this appeal. At the conclusion of the hearing of this appeal, I allowed the appeal and the plaintiff's claim for the sum of RM81,413.93 together with interest of 5% from 26 June 2015 until the date of full settlement of the judgment sum. Cost of RM10,000 was awarded to the plaintiff. The decision of the magistrate court was set aside.

[4] The full grounds of my judgment are set out herein. The parties are referred to here as plaintiff and defendant as they were in the magistrate's court.

A BACKGROUND

[5] The plaintiff was constituted on 13 June 2014 under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ('the BPCA'). The BPCA was enacted to supplement the Strata Titles Act 1985 (Act 318) ('the STA 1985') in relation to the maintenance and management of subdivided buildings. The BPCA applied to JMBs prior to the issuance of strata titles for the parcels in the subdivided building. The BPCA was repealed and replaced on 1 June 2015 by the Strata Management Act 2013 (Act 757) ('the SMA 2013').

[6] The defendant is a purchaser of one unit of parcel in the building ie Unit No D1-F16/PP-F16, ('unit'). The defendant purchased the unit from the developer of the building, Dirga Niaga Selangor Sdn Bhd ('the developer') through a sale and purchase agreement dated 18 November 1995 ('SPA').

[7] The relevant provisions in the SPA for purposes of the plaintiff's claim are cll 13 and 15, which state as follows:

E 13. PAYMENT SERVICES CHARGES

The Purchaser shall be liable to pay the service charges for the maintenance and management of the Common Property and Common Facilities provided by the Developer prior to the establishment of a Management Corporation under the Strata Title Act 1985 and from the date the Purchaser takes vacant possession of the Parcel, the Purchaser shall pay a reasonable proportion of costs and expenses incurred.

F 15. PAYMENT OF OUTGOINGS

The Purchaser shall be liable for all outgoings including quit rent, rates, taxes, assessment and other charges in the relevant proportion to the Parcel in from the date of this Agreement and the Purchaser shall indemnify the Developer for such outgoings in respect of the Parcel.

[8] At the trial the defendant (DW1) in cross-examination by the plaintiff's counsel admitted that he had never paid any of the maintenance and management charges since taking vacant possession of the unit (see *rekod rayuan* (Jld 1) at p 59).

[9] The developer was wound up on 28 March 2006 pursuant to an order of the High Court (Suit No D5-28-536 of 2005). The High Court on 1 December 2008 appointed Augustine a/l TK James from Radiant Consulting Asia Sdn Bhd as a private liquidator of the developer ('liquidator'). Prior to the liquidator's appointment, the majority owner of the units in the building, Venue Venture Sdn Bhd, was maintaining and managing the building. Venue Venture asked the liquidator, after his appointment as liquidator, to take over

the management and maintenance of the building. As the liquidator is not a property manager, it first appointed Fadzilah & Fikri Sdn Bhd with effect from 30 April 2009 and then Jova Building Services on 1 June 2011 as property managers to operate and manage the building until the plaintiff is formed.

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ISSUE TO BE TRIED AT MAGISTRATE'S COURT

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[10] There was only one issue to be tried at the magistrate's court. It was whether the defendant is liable to pay the outstanding service charges of RM81,413.93 to the plaintiff.

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PRELIMINARY OBJECTION

[11] The defendant raised a preliminary objection that the plaintiff's appeal to the High Court is incompetent by virtue of s 28(1) of the Courts of Judicature Act 1964 ('the CJA'). Section 28 of the CJA states:

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28 Civil appeals from subordinate courts

(1) Subject to any other written law, no appeal shall lie to the High Court from a decision of subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

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[12] The defendant refers to the High Court's decision in *Lein Tiam Hock v Arumugam all Kandasamy* [1999] 6 MLJ 129; [1999] 3 AMR 3670; [1999] 2 CLJ 853, where Suriyadi Halim Omar J (as he then was) held that the 'amount in dispute' or the 'value of the subject-matter' under s 28 of the CJA:

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must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counter-claim submitted by the defendant, if any.

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[13] His Lordship came to the said conclusion after distinguishing the decisions of the Federal Court in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136; [1997] 2 AMR 1742; [1997] 2 CLJ 68 and the Court of Appeal in *Manohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365; [1996] 1 CLJ 149. Both these cases considered the provision in s 68 of the CJA, which governs appeals to the Court of Appeal. Section 68 of the CJA states:

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68 Non-appealable matters

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(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

- (a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

A (b) where the judgment or order is made by consent of parties;

B [14] In *Yai Yen Hon*, the Federal Court held that the appeal was allowed even if the judgment sum was less than RM100,000 (which was the then threshold sum in s 68(1)(a) of the CJA). In *Manohary Teresa*, the Court of Appeal held that no leave was required although the judgment sum was less than RM250,000. In both cases, the Federal Court and the Court of Appeal held that the monetary limit set was based on the sum claimed and not the judgment sum. However, Suriyadi Halim Omar J in *Lein Tiam Hock*,
C distinguished both cases on the grounds that s 28 of the CJA unlike s 68 of the CJA had the word 'decision' in it. His Lordship held that s 28 read as a whole meant that the judgment sum of the subordinate court must exceed the sum of RM10,000 to enable an appeal from the subordinate court to the High Court.

D [15] Respectfully, I have to disagree with the finding in *Lein Tiam Hock*, which being a decision of the High Court is only of persuasive authority on this court. In my view, s 28 of the CJA read as whole means that there cannot be an appeal from a decision of a subordinate court in a civil cause or matter, where the amount in dispute or the value of the subject matter is RM10,000 or less.
E Section 28 does not state 'where the decision of the subordinate court is for a sum of RM10,000 or less'. Similar to ss 68 and 28 states 'where the value in dispute or the value of the subject matter' is for a sum of RM10,000 or less. For this reason, in my view, the Federal Court and the Court of Appeal's decisions in *Yai Yen Hon* and *Manohary Teresa* respectively are not distinguishable: they
F apply to appeals from the decisions of the subordinate courts to the High Court in a civil cause or matter.

G [16] Therefore, notwithstanding that the amount awarded by the magistrate court is RM3,579.87, the amount in dispute in this instant case is the sum of RM81,413.93 which the plaintiff claims is the service charges owing by defendant as at 22 June 2015.

H [17] The defendant's counsel further submits that as the notice of appeal did not state the questions of law to be decided, the appeal should not be heard by this court. I have to respectfully disagree with learned counsel for the defendant. The Court of Appeal in *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [2004] 4 AMR 357; [2004] 3 CLJ 321 held that the notice of appeal does not have to set the questions of law which the appeal involves. Gopal Sri Ram JCA in delivering the judgment of the Court of
I Appeal held that if the court was to hold otherwise 'the court would be imposing a condition of appeal that written law does not prescribe'. His Lordship held that s 28(1) of the CJA does not state the notice of appeal should expressly state the questions of law. Neither does O 49 of the SCR or O 55 of the Rules of the High Court 1980. In *Neoh Choo Ee*, the Court of Appeal

disagreed with the High Court judge that a Notice of Appeal in Form 140 of the SCR should set out the questions of law which the appeal involves. It agreed that points of law will in the usual way be taken in the memorandum of appeal and held that the High Court ought to resort to the memorandum of appeal.

A

[18] The Court of Appeal in *Neoh Choo Ee* held as ‘wrongly decided and should no longer be considered as good law’ the decisions of the High Court in *Malayan Banking Bhd v Syed Ali bin Mohsin* [1991] 3 CLJ Rep 2892; [1991] 3 CLJ 236 and *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187. Both these cases held that the notice of appeal in Form 140 must state at least generally the question or questions of law that the appellant wishes to appeal on.

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[19] For these reasons, I find that even if the High Court’s interpretation in *Lein Tiam Hock* of s 28 of the CJA is used in this case, this instant appeal would come within the proviso in s 28 of the CJA as it relates to questions of law. The questions of law in this appeal are stated in the memorandum of appeal.

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[20] Accordingly, the defendant’s preliminary objection is disallowed.

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THE PLAINTIFF’S APPEAL

[21] The plaintiff’s appeal is essentially premised on two questions of law, namely:

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- (a) whether the magistrate had erred when she held that there had to be an assignment under s 4(3) of the Civil Law Act 1956 (‘the CLA’) from the developer and the property managers appointed by the liquidator to the plaintiff, in order for the plaintiff to have a cause of action against the defendant for the unpaid management fees for the period from 2005 to 13 June 2014 ie the date of the plaintiff’s constitution; and
- (b) whether limitation had set in under s 6 of the Limitation Act 1953 and the plaintiff’s claim against the defendant is statute-barred.

G

QUESTIONS BEFORE THIS COURT

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Was an assignment of the defendant’s debt to the plaintiff required?

[22] The magistrate found that the plaintiff had successfully proven its claim against the defendant. However, the magistrate held that based on the Court of Appeal’s decision in *Prangin Mall Sdn Bhd v Tang Joo Ming & Anor* [2013] 6 MLJ 753 since there was no written notice of assignment showing that the developer and the property managers appointed by the liquidator had assigned under s 4(3) of the CLA the rights to collect the service charges to the plaintiff,

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A the plaintiff does not have any right to collect the services charges prior to its establishment. The plaintiff was established on 13 June 2014. The writ of summons was filed on 26 June 2015. The magistrate held that the plaintiff is allowed to claim the service charges from July 2014–June 2015.

B [23] In *Prangin Mall*, the appellant was the property agent appointed by the developer of the mall to maintain and manage the mall before the formation of the JMB. The question before the Court of Appeal was whether the appellant retained its right to claim the charges incurred prior to the formation of the JMB. The Court of Appeal held that the role and duties of the appellant as
 C property manager ceased on the formation of the JMB.

[24] The Court of Appeal in *Prangin Mall* recognised that the developer is under a duty pursuant to s 5(4) of the BPCA to maintain and managed the mall before the formation of the JMB. Notwithstanding the obligation, the BPCA did not expressly state that the developer has the right to collect the services charges required to undertake the maintenance and management from the unit owners. The Court of Appeal held that since the BPCA is silent on the power of the developer to collect the charges, such power is a contractual power derived from the sale and purchase agreement with the unit owners and not one derived from statute. It also held that since there is no provision in the BPCA which transfers or hand overs the developer’s contractual right to the JMB, the developer’s contractual right to collect the charges had to be assigned from the developer to the JMB. Rohana Yusuf J (as she then was) in delivering the judgment of the Court of Appeal held that:
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[10] The duty of the developer to carry out maintenance and management of the mall before the formation of the JMB is imposed by s 5(4) of Act 663. It is therefore a legal duty imposed on the developer to carry out maintenance and management of the mall before the formation of JMB. *Having imposed such a duty the law is silent on the right to collect the charges by the developer. ...*
 G

[13] Having outlined the above, it becomes clear that the developer’s right to collect charges is one that is derived under the sale and purchase agreement and the amount owed by the respondents herein are expenses incurred by the developer prior to the formation of JMB. This contractual right to collect the charges under the sale and purchase agreement remain enforceable despite the obligation to manage and maintain the building ceased upon the formation of the JMB. We say this because Act 663 does not override or transfer that contractual right to JMB.
 H

...
 [18] Any ‘handing over’ or transfer of contractual rights can only take effect if there is an assignment of such rights either contractually or by law. *There is no evidence of an assignment of the contractual right, nor any provision in Act 663 that transfers or hand over that contractual right.* In this regard, we are mindful that if the words in the statute are clear and precise, then no more can be said or inferred than those words in the ordinary sense. (Emphasis added.)
 I

Strata Titles (Amendment) Act 2013 and Strata Management Act 2013

A

[25] The Strata Titles (Amendment) Act 2013 ('the STAA 2013') and the SMA 2013 came into force on 1 June 2015. The STAA 2013 carved out all the provisions relating the management of subdivided buildings under the STA 1985 and placed it under the SMA 2013. The SMA 2013 is to be read and construed with the STA 1985. Section 3 of the SMA 2013 states:

B

3 Construction of the Act

This Act shall be read and construed with Strata Titles Act 1985 and the subsidiary legislation made under that Act in so far as they are not inconsistent with the provisions of this Act or the regulations made under this Act.

C

[26] The SMA 2013 repealed the BPCA. Section 153 of the SMA 2013 states as follows:

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153 Repeal

The Building and Common Property (Maintenance and Management) Act 2007 [Act 663] is repealed.

[27] Chapter 5 of the SMA 2013 contains transitional and saving provisions due to the repeal of the BPCA. Section 37(1) of the SMA 2013 states that all references to the BPCA in any written law or document, when the SMA 2013 comes into operation, shall be construed as references to the BPCA. Section 37(2) of the SMA 2013 states that:

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37 Reference to repealed Act and savings provision

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- (1) All references to the repealed Act in any written law or document shall, when this Act comes into operation, be construed as references to this Act.
- (2) nothing in this Act (SMA 2013) shall affect the past operation of, or anything done under the repealed Act (BPCA) before the date of coming into operation of this Act (SMA 2013).

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[28] Pursuant to s 38 of the SMA 2013, a JMB established under the BPCA is deemed to be established under the SMA 2013 and that the provisions of the SMA 2013 applies to the JMB. Section 38 states as follows:

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38 Existing Body and committee

A Joint Management Body established or a Joint Management Committee elected under the repealed Act shall be deemed to have been established or elected under this Act except that after the commencement of this Act the provisions of this Act shall apply to such a Body or Committee.

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- A [29] Accordingly, the plaintiff which is a JMB formed under the BPCA is deemed to be established under the SMA 2013 and the provisions of the SMA 2013 applies to plaintiff.
- B [30] Under s 40 of the SMA 2013, every accounts or funds established by a developer or a JMB under the BPCA before the commencement of the SMA 2013 shall continue and deemed to be established under the SMA 2013.
- Duties and powers of developer prior to the establishment of a JMB
- C [31] Chapter 2 of the SMA 2013 contains provisions governing management of a subdivided building by a developer before the JMB is established.
- D [32] Section 9 of the SMA 2013 provides that a developer during the ‘developer’s management period’, shall be responsible to maintain and manage properly any building or land intended for subdivision into parcels and the common property of the building. ‘Developer’s management period’ is defined in s 7(2) of the SMA 2013 as:
- E the period commencing from the date of delivery of vacant possession of a parcel to a purchaser by the developer until one month after the establishment of the joint management body or such other time as be extended by the Commissioner.
- F [33] Sections 9(3), 13(2) and 15(1) of the SMA 2013 remedied the lacuna in the BPCA as regards the developer’s power to collect the charges for maintenance of the building from the property owners and the transfer/hand over of that right from the developer to the JMB; which lacuna was highlighted by the Court of Appeal in *Prangin Mall*.
- G [34] Section 9(3) of the SMA 2013 expressly states that the developer has the power during the developer’s management period to collect charges and contribution to the sinking fund from the parcel owners. Section 9(3) of the SMA states as follows:
- H 9(3) The powers of the developer during the developer’s management period shall be as follows:
- I (a) to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;
- (b) to collect the contribution to the sinking fund from the parcel owners;
- (c) to authorize expenditure for the carrying out of maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;

- (d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to under paragraph (2)(d); and
- (e) to do all things reasonably necessary for the performance of its duties under this Act.

A

B

[35] Section 13(2) of the SMA 2013 states that any developer who has collected moneys from purchasers for the maintenance and management of any building may continue to do so until the JMB is established. It states as follows:

C

13(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting moneys from the purchasers for the maintenance and management of any building or land intended for subdivision into parcels and the common property comprised in the development area, may continue to do so until the joint management body is established, provided that all moneys shall be collected and dealt with by the developer in accordance with this Act.

D

[36] Section 15(1) of the SMA 2013 requires the developer before the developer's management period expires, inter alia, to transfer all balances of moneys in the maintenance account and the sinking fund account; and hand over all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account to the JMB. Section 15(1) states as follows:

E

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(1) A developer shall, before the developer's management period expires —

- (a) transfer all balances of moneys in the maintenance account and the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the joint management body;
- (b) hand over to the joint management body —
 - (i) the administration office set up by the developer under paragraph 9(4)(a);
 - (ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;
 - (iii) all the assets of the development area;
 - (iv) all records relating to and necessary for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property of the development area; and
 - (v) all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund account.

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H

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A [37] Therefore, pursuant to s 9(3) of the SMA 2013, the developer in this
instant case has the statutory power to collect the service charges from the
parcel owners, including the defendant. Under s 13(2) the developer and the
property managers appointed by the liquidator may continue to collect moneys
intended for the maintenance and management of the building until the
B setting up of the plaintiff. Per the decision in *Prangin Mall*, the property
managers' role and duties ceased upon the formation of the plaintiff (see
para [23] above). There is a statutory transfer/ handover provision in s 15(1) of
the SMA 2013 requiring the developer to transfer and handover all the
balances and invoices to the plaintiff once it is established.

C [38] Accordingly, I find that by reason of these statutory provisions in the
SMA 2013, there is no legal necessity for an assignment under s 4(3) of the
CLA from the developer or the liquidator to transfer to the plaintiff of its rights
D to collect the charges from the defendant. The SMA 2013 has cured the lacuna
identified by the Court of Appeal in *Prangin Mall*. The reason why the Court
of Appeal held that an assignment was required in that case was because there
was no express statutory provision giving the developer the right collect the
service charges and requiring the developer to transfer/hand over that right to
E the JMB.

[39] For these reasons, I find that the learned magistrate had erred in law
when she held that the plaintiff's claim before June 2015, the BPCA applies
and for the plaintiff's claims for the month of June 2015, the SMA 2013
F applies. She held:

... Oleh yang demikian, bagi tuntutan Plaintiff sebelum Jun 2015, Akta yang
terpakai adalah Akta Bangunan dan Harta Bersama (Pengurusan dan
Penyenggaraan) 2007 dan tuntutan Plaintiff bagi bulan June 2015, Akta yang
G terpakai adalah Akta Pengurusan Strata 2013.

In making the decision, the learned magistrate had failed to take into account
the retrospective application of the SMA 2013 to developers of developments
that have been completed prior to the commencement of the SMA 2013 and to
JMB's established under the BPCA.

H [40] I also find that the learned magistrate had erred in law by holding that
based on the decision in *Prangin Mall*, the plaintiff did not have any locus to
claim the outstanding charges prior to its establishment because there was no
assignment under s 4(3) of the CLA from the developer or the property
I managers to the plaintiff.

[41] With respect, I find that the learned magistrate's reason for arriving at
such a decision flawed. She had failed to take into account the lacuna in the
BPCA identified in *Prangin Mall* was rectified by the SMA 2013. Thus, the

very reason why the Court of Appeal in *Prangin Mall* held that an assignment was required to transfer/hand over a developer's contractual rights to a JMB no longer exists with the commencement of the SMA 2013. Chapter 2 of the SMA 2013 expressly provides that the Act applies retrospectively to the period prior to the establishment of the JMB to developers of development areas that have been completed prior to the commencement of the SMA 2013. The developers of buildings completed on or before 1 June 2015 are retrospectively given the statutory power by the SMA 2013 to collect the service charges from parcel owners prior to the establishment of a JMB and if they had been collecting the charges before 1 June 2015, they can continue collecting such charges until the JMB is established (see s 13(2) of the SMA 2013).

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B

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Has limitation set in?

[42] Section 33 of the SMA 2013 stipulates that a JMB is entitled to recover from a parcel owner the sum due to it in a Court or in the Strata Management Tribunal ('the tribunal'). Section 105 of the SMA 2013 expressly states that:

D

105(2) For avoidance of doubt, the Limitation Act 1953 [Act 254] shall not apply to proceedings of the Tribunal.

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[43] The SMA 2013 is silent on whether the Limitation Act 1953 is similarly inapplicable to proceedings in court. As a JMB can choose to either file a claim in the tribunal or in a court of competent jurisdiction, I am of the view that it can be implied that the Limitation Act shall also not apply to proceedings of court. To interpret otherwise result in a discrepancy as to claims made at the tribunal and at court.

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[44] Moreover, s 17A of the Interpretation Acts 1948 and 1967 requires a purposive approach in statutory interpretation. It states as follows:

G

17A Regard to be had to the purpose of Act

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

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[45] In *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97; [2004] 2 CLJ 265, the Federal Court held that pursuant to s 17A of the Interpretation Acts 1948 and 1967 the purposive approach is to be used for statutory interpretations. Steve Shim CJ (Sabah and Sarawak), in holding that the purposive approach is to be used for statutory interpretations, said as follows:

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It is pertinent to note that s 17A was a recent amendment under the Interpretation (Amendment) Act 1997 (Act A996) and became effective on 25 July 1997. This

A would be after the *National Land Finance Co-operative*. In my view, the law is now clear beyond doubt. Section 17A above enjoins the purposive approach to statutory interpretation. This applies to all statutes including taxing statutes.

B [46] The SMA 2013's stated purpose is 'to provide for the proper maintenance and management of the buildings and common property, and or related matters'. In my view, it would defeat the SMA 2013's stated purpose if the plaintiff's claim for the outstanding service charges made at court is time-barred whereas if the plaintiff had made the claim at the tribunal, it would not be time-barred.

C [47] For this reason, I find that the magistrate had erred in law when she held that limitation had set in under s 6 of the Limitation Act 1953 and the plaintiff's claim against the defendant is statute-barred.

D DECISION

E [48] For the above reasons, I find that an assignment of the debt to the plaintiff is not required for the plaintiff to maintain a claim against the defendant for the outstanding service charges due prior to the plaintiff's establishment.

[49] I also find that limitation has not set-in and the plaintiff's claim against the defendant is, accordingly, not statute-barred.

F [50] The plaintiff's appeal against the decision of the magistrate is allowed. The decision of the magistrate is hereby set aside. The defendant is liable to pay the plaintiff the sum of RM81,413.93 with interest of 5% to be paid from 26 June 2015 until the date of full settlement. Cost of RM10,000 to be paid by the defendant to the plaintiff subject to the payment of the allocator fee.

G *Appeal allowed; magistrate's decision set aside with costs of RM10,000 subject to allocator.*

H Reported by Dzulqarnain Ab Fatar

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